

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

|   |   |                           |
|---|---|---------------------------|
| In the Matter of                          | ) |                           |
|   | ) |                           |
| Schools and Libraries                     | ) | CC Docket No. 02-6        |
| Universal Service Support Mechanism       | ) |                           |
|   | ) |                           |
| Request for Waiver by                     | ) | Application No. 161059633 |
| Washington Office of Financial Management | ) |                           |
| Regarding a Funding Decision by the       | ) |                           |
| Universal Service Administrative Company  | ) |                           |

**REQUEST FOR WAIVER  
BY THE WASHINGTON OFFICE OF FINANCIAL MANAGEMENT  
REGARDING A FUNDING DECISION BY THE  
UNIVERSAL SERVICE ADMINISTRATIVE COMPANY**

Pursuant to sections 54.719 and 54.722 of the Commission's rules,<sup>1</sup> the Washington Office of Financial Management<sup>2</sup> (Washington OFM) hereby respectfully requests a review of a Universal Service Administrative Company (USAC) decision to reduce funding for Funding Year 2016.<sup>3</sup> USAC reduced funding because it erroneously concluded that the list of sites included in two of the invoices Washington OFM submitted to USAC did not match the list of sites on the associated FCC Form 471. USAC was mistaken in this assessment and gave Washington OFM no opportunity to explain or clarify before reducing Washington OFM's funding.

Because USAC had previously indicated that it had no additional questions on these FRNs, Washington OFM did not notice USAC's mistake until after the 60-day appeal deadline

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<sup>1</sup> 47 C.F.R. § 54.719(b), (c); 47 C.F.R. § 54.722(a).

<sup>2</sup> Billed Entity Number 152695.

<sup>3</sup> The FCC Form 471 number is 161059633. The FRNs are 1699138883 and 1699139165.

had passed, and but for USAC's mistake there would have been no need for Washington OFM to file an appeal. For these reasons, Washington OFM respectfully requests that the Bureau waive the deadline for filing an appeal of a USAC action and remand this application to USAC to make a determination on the merits.<sup>4</sup>

## **I. BACKGROUND**

Washington OFM receives E-rate funding for its K-20 Education Network. Launched in 1996 with funds from the Washington State Legislature, the K-20 Education Network provides a single, cost-effective solution to meeting the diverse video and data needs of schools in communities large and small, urban and rural, across the state. The K-20 Education Network delivers on Washington State's priority of making world-class education equally accessible and affordable to all.

Washington OFM requested and received funding for Category One data transmission and Internet access services for the K-20 network in Funding Year 2016. After the invoices were submitted, USAC asked several questions about the invoices but did not ask any questions about the eligibility of entities. On December 1, 2017, USAC sent Form 472 Notification Letters to Washington OFM's consultant, Infinity Communications and Consulting, Inc. (Infinity), notifying Infinity that the Billed Entity Applicant Reimbursement (BEAR) forms for FRNs 1699138883 and 1699139165 had been processed.<sup>5</sup> Just a few days earlier, on November 27, 2017, Infinity had emailed USAC to ask whether there were any questions or additional

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<sup>4</sup> Because USAC lacks authority to waive the appeal filing deadline, Washington is filing this appeal directly with the Commission. 47 C.F.R. § 54.719(c).

<sup>5</sup> See Exhibit 1, BEAR Notification Letters.

information needed on these FRNs in order to process the invoices, and USAC's representative responded the same day that the review of these invoices was already complete.<sup>6</sup>

Because USAC gave no indication that it had any remaining questions or concerns about the BEARs, neither Infinity nor Washington OFM had any reason to expect a reduction in funding. Accordingly, neither Infinity nor Washington OFM noticed that the amount of funding for FRNs 1699138883 and 1699139165 had been reduced by a total of \$68,725.29.<sup>7</sup> It was not until April 2018, four months after USAC sent the BEAR Notification Letters for those FRNs, that Washington OFM noticed the reduction in funding. Infinity promptly emailed USAC on April 9, 2018, to ask for an explanation of the funding reduction.<sup>8</sup> In response, USAC's representative explained that for each FRN, USAC had been "unable to tie" several sites to the Recipients of Service list on Washington OFM's FCC Form 471.<sup>9</sup> Infinity replied that in its experience, USAC reviewers usually reached out when they found apparent discrepancies in the BEAR forms, and asked why USAC had not reached out this time before reducing funding.<sup>10</sup> USAC's representative responded that, at that time, USAC reviewers were not required to do so.<sup>11</sup>

## **II. WAIVER IS APPROPRIATE BECAUSE THIS ISSUE SHOULD HAVE BEEN RESOLVED WITH USAC**

The Bureau has recently granted requests for waiver that are factually similar to the instant request. Washington OFM would not have had to file this appeal if USAC had given it

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<sup>6</sup> See Exhibit 2, Email Exchange Between USAC and Infinity.

<sup>7</sup> See Exhibit 1, BEAR Notification Letters.

<sup>8</sup> See Exhibit 2, Email Exchange Between USAC and Infinity.

<sup>9</sup> See *id.*

<sup>10</sup> See *id.*

<sup>11</sup> See *id.*

an opportunity to explain the seeming discrepancies between its BEAR forms and its FCC Form 471. There were, in fact, no discrepancies, as Washington OFM explained to USAC as soon as it learned of the reduction in funding. Accordingly, Washington OFM respectfully asks that the Bureau waive section 54.720 of the Commission's rules, consistent with its precedent, and remand the instant application to USAC for a decision on the merits.

Any of the Commission's rules may be waived if good cause is shown.<sup>12</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>13</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>14</sup>

In its June 29, 2018 streamlined public notice resolving universal service appeals, the Bureau granted two requests for waiver of the appeal filing deadline on the grounds that "the issue on appeal before the Commission should have been resolved with USAC before the petitioner resorted to filing an appeal."<sup>15</sup> These grants are the most recent in a long history of orders showing the Commission's clear expectation that USAC attempt to resolve known or suspected issues with the applicant before issuing a funding decision. In 2007, for example, the Commission "require[d] USAC in each instance to detail in writing and with specificity to the

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<sup>12</sup> 47 C.F.R. § 1.3.

<sup>13</sup> *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>14</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

<sup>15</sup> *Streamlined Resolution of Requests Related to Actions By the Universal Service Administrative Company*, CC Docket No. 02-6, WC Docket No. 06-122, Public Notice, DA 18-672, at 4 n.11 (rel. June 29, 2018) (citing *Requests for Review of Decisions of the Universal Service Administrator by Savannah R-III School District; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 23 FCC Rcd 12053, 12057 n.30 (Wireline Comp. Bur. 2008)).

applicant any information or documentation USAC is seeking.”<sup>16</sup> In light of this precedent, the issue in the instant appeal is one that USAC clearly should have attempted to resolve with the applicant before reducing Washington OFM’s funding.

As we have explained, Washington OFM could not have met the 60-day appeal deadline because it did not discover USAC’s error until long after the deadline had passed. More importantly, though, this appeal should not have been necessary in the first place.<sup>17</sup> If the USAC reviewer had simply notified Washington OFM’s consultant that she was having trouble connecting sites listed on the BEARs with those identified in the FCC Form 471, Infinity could have cleared up her confusion with a single email, as it did once the mistake had been discovered. Instead, not only did USAC’s representative not ask about the list of sites, she explicitly told Infinity that her review of the BEARs was complete and that she had no more questions. It was little comfort to Washington OFM—which must now spend the time and expense to file an appeal with the Commission—to be told that USAC reviewers are “not required” to ask applicants for clarification when they spot apparent discrepancies between the

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<sup>16</sup> *Requests for Review of the Decision of the Universal Service Administrator by Alpaugh Unified School District, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 22 FCC Rcd 6035, 6038 ¶ 6 (2007); *see also Requests for Review of Decisions of the Universal Service Administrator by Bootheel Consortium, Silver City, NM et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 22 FCC Rcd 8747, 8752 ¶ 10 (Wireline Comp. Bur. 2007) (“[W]hen USAC has reason to believe that an applicant’s funding request includes services for ineligible entities, USAC shall: (1) inform the applicant promptly in writing of any apparently ineligible entities; (2) offer to work with the applicant and the relevant state agency to resolve the eligibility status of the entity; and (3) permit the applicant to revise its funding request to remove the services for ineligible entities or allow the applicant to provide additional documentation to show why the relevant entity is eligible . . .”).

<sup>17</sup> *See supra* n.15; *see also Request for Review and/or Requests for Waiver of the Decisions of the Universal Service Administrator by Animas School District 6, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-427902, *et al.*, CC Docket No. 02-6, Order, 26 FCC Rcd 16903, 16905 ¶ 4 (Wireline Comp. Bur. 2011) (granting waivers for late filed appeals because the applicant filed within a reasonable time of receiving actual notice or because the appeal would not have been necessary, but for an error by USAC).

BEAR and the Form 471. In view of the precedent described above, it is clear that the Commission expects USAC reviewers to do exactly that.

USAC should have asked Washington OFM for additional information when it spotted a potential problem with the BEARs. Because it failed to do so even though Commission precedent clearly indicates that it should have, Washington OFM respectfully asks that the Bureau waive the appeal filing deadline and remand its application to USAC for a determination on the merits, now that Washington OFM has explained to USAC that there were in fact no discrepancies on its BEAR forms. It would be contrary to the public interest to withhold almost \$70,000 in E-rate funding from Washington OFM under these circumstances.

### **III. CONCLUSION**

For the foregoing reasons, Washington OFM respectfully requests that the Bureau grant this appeal and waive the filing deadline, and remand this application to USAC to make a determination on the merits.

Respectfully submitted,

*Fred Brakeman*

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*Consultant for Washington OFM*

July 19, 2018

## **CERTIFICATE OF SERVICE**

This is to certify that on this 19th day of July, 2018, a true and correct copy of the foregoing Request for Review was sent via email to the Schools and Libraries Division, Universal Service Administrative Company at the [Appeals@sl.universalservice.org](mailto:Appeals@sl.universalservice.org) address.

*Fred Brakeman*

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Fred Brakeman

## **ATTACHMENTS**

Exhibit 1      BEAR Notification Letters

Exhibit 2      Email Exchange Between USAC and Infinity